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REVIEWS AND CRITICISMS.

DER ABERGLAUBE IM RECHTSLEBEN. By *Dr. Schefold und Dr. Werner, Juristisch-psychiatrische Grenzfragen*, Marhold, Halle, Bd. VIII. 1912. S. 1-64.

The banishment of error from human beliefs is an essential condition of progress, and is the aim of scientific and philosophical investigation. Complete attainment of the goal is infinitely far away; and such definite knowledge as has been acquired is accessible and comprehensible to comparatively few, so that everyone in some respects, and most people to a large extent, entertain mistaken beliefs. Some of these are sufficiently gross to justify calling them superstitions. Superstition is always a disadvantage, slight or grave, to its possessor; and sometimes, even in these days of rapidly increasing enlightenment that is uplifting even the humblest and most ignorant circles in civilized lands, it still becomes inimical to human life, peace and prosperity, and thus comes into intimate contact with the law.

This question of the relation of superstition to the law was discussed at the ninth meeting of jurists and physicians at Stuttgart, on the 19th of May, 1912—in its legal aspects by Dr. Schefold, and in its medical aspects by Dr. Werner. Their papers, together with a brief following general discussion, are given in the pamphlet under consideration. Both authors give numerous references to the sources wherein the question is treated in a more detailed and thorough manner. Within the limits of such papers, only a general outline of the subject is to be expected. More particular information, and matters of serious dispute, must be sought in the larger works.

According to Dr. Schefold (pp. 3-42), superstition may lead its possessors to the commission of criminal acts or violations of common law; or may lead others to the exploitation of the superstitious; or knowledge of it may serve to assist or to hinder the detection of crime, or help in its prevention.

The most serious superstitions are those that lead to the sacrifice of human life, to bodily injury, or to the disturbance of corpses. Among the beliefs that may lead to these results, the following receive more or less extended mention: that supernatural beings exist who must be propitiated by human sacrifice, in order to secure the stability of buildings, or to guard against pestilence or failure of crops; that supposed changelings must be tortured in order to bring back the rightful child; that possession of the human body by demons or by the devil is possible, who may be exorcised by maltreatment; that human blood possesses a curative power or other magical properties; that sexual intercourse, especially with children, may cure serious, particularly sexual, diseases; that there are witches, persons with the evil eye, vampires, ghosts; that blood, or portions of a corpse, may heal, may lead to the discovery of hidden treasure, may confer the power of flying or of invisibility, or may guard against discovery in cases of crime; that various forms of

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ordeal reveal guilt or innocence. To the same class belong the numberless forms of superstition in medicine, so prevalent today. There is hardly one of all these errors that does not still exist and lead to the serious consequences mentioned; and the author cites numerous examples from recent times.

Another class of crimes results from belief in the magical efficacy of stolen goods, in charms and spells for purposes of cure, love, luck, or the gaining of lawsuits, in fortune-telling. Lawsuits, based on other than criminal grounds, such as claims for damages, may arise as a result of a large number of superstitions.

Superstition hinders the just execution of law through leading witnesses to incorrect perceptions or judgments, or to superstitious concealment of truth. On the other hand, a judge acquainted with superstitions is often helped in the detection of guilt. A criminal who believes in the efficacy of ordeals may be led to give himself away; the possession of talismans supposed to protect against the consequences of crime may incriminate; the belief that something left behind (excrement, etc.), at the place of crime prevents discovery, may lead to detection. Knowledge of the many superstitions connected with the act of perjury, guarding one against its consequences or fastening them upon a "scapegoat," is naturally of great advantage to the judge.

Infractions of law arising from preying upon the superstitions of others—swindling, extortion, blackmail—occasion great injury and are difficult to detect. They are dangerous, not only in themselves, but because their perpetrators often combine their art with other dirty work, such as pimping, abortion, etc.

In his final pages, Dr. Schefold discusses the present attitude of German law toward superstition, and changes that might be desirable. Superstition is no excuse for failure to carry out the terms of a contract, unless gross criminal negligence is the only question involved, and superstition cannot be classed as such. When superstitious practices are used to facilitate the commission of a crime, the superstition deserves little consideration. But in many cases the existence of superstition may be of importance in deciding the question of guilt. Many cases of murder and injury arising out of superstition cannot be punished as intentional. It is not the person injured who is assailed, but, for example, the supposed changeling, ghost or possessing demon. In some such cases, only criminal negligence can be alleged. Even this degree of responsibility may be doubtful, in case of persons who seriously believe their superstitious delusions; for stupidity and ignorance as such are not punishable. The author is of the opinion that in cases of murder, where extenuating circumstances are not admitted, its occurrence as a result of superstitious delusion should be regarded as justifying milder punishment. In all other cases, extenuating circumstances, including superstition, are sufficiently allowed for.

In the struggle against the exploitation of the superstitious, present laws are inadequate. It is extremely difficult to prove the connection between the trickery and the resulting injury; the acts are often done

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in entire good faith; chance and suggestion give the charlatan frequent actual success; the injured are often exceedingly reluctant to give testimony. More definite and effective laws seem to be called for against the use of superstitious practices and the circulation of superstitious publications.

Dr. Werner (pp. 43-62) also regards a knowledge of superstitious beliefs and practices as important for all who may be concerned in any way with their legal consequences. He first discusses at length the belief in the supernatural origin of diseases and superstitious practices that follow. Mental disorders are not the only ones so treated; there is not a single bodily disease that is not still combatted by magical methods. Fortunately the methods used are for the most part relatively harmless, though occasionally this is not the case, and even the most harmless method of charlatanry may work mischief indirectly by preventing the timely use of legitimate methods. Books of magical healing, from one of which he gives interesting extracts, are widespread. Serious injuries to health result from superstitious practices, and unfortunately most of them are successfully concealed. Even when known, the responsible charlatan can rarely be punished, because of the difficulty of establishing that the injury follows solely from the superstitious treatment. Though superstitions concerning healing cannot themselves be eradicated by legal enactments, yet this is not true of the deceptive exploitation of superstition and of injuries to health through charlatanry; and effective laws should be enacted against these.

The belief in possession by demons still exists in most religions, excepting the Jewish, but fortunately seldom leads to practical consequences. Hysteria and epilepsy are the diseases that have especially led to the assumption of possession, though occasionally any other bodily or mental disorder may serve in the same way. When the belief arises, it may lead to attempts at exorcism, which sometimes are carried out with brutal recklessness and may lead to the killing of the "possessed."

Spiritism, like its predecessor, somnambulism, stands in closest relation to abnormal psychical conditions. It must not be assumed that in all cases the deceptions practised by mediums are conscious and intentional. It is hard to determine where unconscious deception ceases and conscious trickery begins, for almost all mediums are neuropathically and psychopathically affected.

Superstition may occur in all psychoses, since all involve sense-illusion or delusion; but some kinds furnish especially favorable conditions for its occurrence, particularly those accompanied by depressive emotions, by self-accusations, religious scruples, tendency to subtilizing, etc.—such, for example, as melancholy, depressive phase of circular disturbance, lighter forms of dementia precox, paranoiac states.

The legal questions involved in cases complicated by the presence of superstition are those of responsibility, of capacity for business, of ability to give witness or take oath. In all these cases the existence of superstition alone is not decisive. Whether or not it is complicated by disqualifying mental disorder is important, and often difficult to deter-

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mine, for superstition itself is a delusion and symptoms arising from mental disease may give the impression of merely superstitious ideas, or the contrary may occur. Thus serious errors in judicial procedure may arise. A sure decision in some circumstances may be possible only after protracted observation.

The question has often arisen as to whether superstition alone may not constitute a diseased mental condition, but it is to be answered in the negative. The superstition of mentally sound persons, as a motive to acts having forensic consequences, should not be judged in any other manner than other motives of healthy men.

With reference to the judgment of forensic, especially of psychopathic, superstition, it would be desirable to introduce the conception of "diminished responsibility" into future legal procedure.

The best means for diminishing superstition must lie in enlightenment through the influence of school, home, church, and press.

In the discussion (pp. 63-64) that followed these papers, the chief questions raised were as to whether or not extenuating circumstances should be recognized in cases of murder; and if not, whether in such cases the fact that murder arose through superstitious error should itself be considered a justification for the infliction of a lighter penalty. A considerable diversity of opinion was apparent.

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DIE SOGENANTE WIEDERNATURLICHE UNZUCHT. By *Dr. Arthur Muller*, Karlsruhe, i. B. Separatabdruck aus dem *Archiv für Strafrecht und Strafprozess*. Bd. 59, H. 1-4. Pp. 53.

This monograph represents an attempt at a critical discussion, from the standpoint of the jurist, of that part of the proposed new German Code which deals with the subject of sexual offenses.

The note which permeates the author's thesis is one to which even the most ardent advocates of more lenient laws for this class of offenders could have no objection. The author first concerns himself in a very masterly and learned manner with the subject of definitions. What is meant by normality in matters sexual, and at what point do deviations from this concept of normality reach a degree constituting sexual perversion? Does normality in sexual activity depend upon the proposition that sexual life has for its ultimate and only object reproduction, or is there any cognizance to be taken of the biologic necessity for sexual activity, without regard to this ultimate idea of reproduction?

If we agree, as agree we must, to the proposition that sexual activity between two individuals of opposite sexes is still normal even though no thought is had concerning the question of reproduction; if we agree that sexual activity *per se* is a biological necessity irrespective of its ultimate object, how can the homosexualist be considered an offender against the law for merely gratifying this biologic necessity in his own peculiar way?

In other words, what is it that determines in a given case what is the normal way of gratifying this biologic demand? If it is even as-